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Notice of Ex Parte Communication

February 14, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MM Docket No. 02-277, Biennial Ownership Review

Dear Ms. Dortch:

Yesterday, Gary Chapman of LIN Television, Jim Conschacter of Media General, Jim Yager of Gray Television, Jack Goodman, Karen Kirsch and the undersigned met with Commissioners Abernathy, Copps, Martin and Adelstein, as well as Stacy Robinson, Alexis Johns, Catherine Bohigian, Sarah Whitesell and Joe Daley of their offices, to discuss issues relating to the Commission's local television ownership rule.

We discussed a study submitted by NAB with its comments in this proceeding that demonstrated the growing level of financial distress for local television stations in medium and smaller markets, particularly for stations that are not ratings leaders. We pointed out that the study – which reflected financial results through 2001 – did not take into account the continuing decline in network compensation or the financial impact of building and operating digital television facilities in these markets. We stressed that, absent some change in the ownership rules to permit more efficient operations, many of these stations would be forced to reduce the levels of news and other services they offer to the public, or perhaps even go dark.

We pointed out the record established by the duopolies and LMAs that the Commission has allowed in larger markets, including the introduction of new competitive local television services, new or strengthened news programming, and more rapid deployment of digital facilities. These same benefits should be allowed to flow to medium and smaller markets.

We discussed the "10/10" proposal submitted by NAB and a BIA analysis which demonstrated that the use of a ten share line is the most appropriate choice the Commission could make to distinguish between market leading stations and others across

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all television markets. We pointed out the benefits that adoption of the 10/10 proposal could provide in permitting increased efficiencies and improved television service in markets of all size, in contrast with the present duopoly rule that only allows station combinations in the largest television markets.

A copy of a presentation that we provided is attached.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Henry L. Baumann", with a long horizontal flourish extending to the right.

Henry L. Baumann

Attachment

cc: The Honorable Kathleen Abernathy
The Honorable Michael Copps
The Honorable Kevin Martin
The Honorable Jonathan Adelstein
Stacy Robinson
Alexis Johns
Catherine Bohigian
Sarah Whitesell

Duopoly Relief for Small & Medium TV Markets

The “10/10” Proposal



February 13, 2003

TV Duopoly Rule

- ◆ TV stations in medium & small markets – particularly non-market leading stations – are facing unprecedented financial pressure
- ◆ NAB study looked at stations in markets 51-175 in 1993, 1997 & 2001
- ◆ The average high-rated station in markets 51-75, 76-100 & 126-50 experienced a decline in pre-tax profits

Duopoly Studies

- ◆ Pre-tax profits for the average low-rated station in these market groups declined 124%-581%
- ◆ The average low-rated station in all market groups lost money in 2001
- ◆ These figures do not reflect impact of DTV costs and only partially reflect decline in network compensation

Duopoly Rule

- ◆ Local service – particularly local news – will not survive on lower-rated stations without duopoly relief
- ◆ Current duopoly rule, which allows combinations only in largest markets and bars combinations of 4 top-rated stations, is not adequate to address the problem

The “10/10” Rule

- ◆ NAB proposes a presumptive 10/10 rule for TV duopolies
- ◆ Rule is based on 4-book average of 7 AM-1 AM viewing shares
 - use of viewing share test reflects impact of MVPD viewing

The “10/10” Rule

- ◆ 2 stations with shares of less than 10 could be co-owned
- ◆ Station with share of 10 or higher could acquire another station with share of less than 10
- ◆ For transfers qualifying under the 10/10 rule, no other showing would be needed

Why 10?

- ◆ NAB reply comments included a BIA evaluation of the 10/10 test
- ◆ After reviewing data from all 210 TV markets, study concluded that a 10 share test balances two competing concerns – “aiding underperforming local television stations and preventing harmful concentration”
- ◆ 10 share separates market-leading stations from non-leading stations on a reasonably consistent basis across DMAs of varying size

Applying the 10/10 Rule: Austin, TX (Market 54)

Station	Network	Average Share
KTBC	FOX	12.3
KXAN	NBC	12
KVUE	ABC	9.5
KEYE	CBS	6.8
KNVA	WB	6.3

Applying the 10/10 Rule: Savannah, Ga (Market 99)

Station	Network	Average Share
WTOC	CBS	18
WSAV	NBC	9.8
WJCL	ABC	6.5
WTGS	FOX	5.8
WGSA	UPN	2

Applying the 10/10 Rule: Odessa-Midland (Mkt. 154)

Station	Network	Average Share
KWES	NBC	14.3
KOSA	CBS	11.3
KMID	ABC	9.5
KPEJ	FOX & UPN	5.5
KUPB	Univision	5.3
KMLM	REL	
KPXK	PAX	

TV Duopoly Rule

- ◆ FCC should allow triopolies or combinations that do not meet the 10/10 test on a case-by-case basis
 - FCC should expand criteria for “failing” station and should not require that station is in danger of going dark to qualify
- ◆ FCC should permit transfers of existing combinations without re-applying duopoly test

